A SHORT ACCOUNT OF THE ELECTIONS AT EDINBURGH.

BRITISH MUSEUM

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THE political contentions of the borough being now at an end, it is not improper to take a general ſurvey of tranſactions which intereſted ſo powerfully the parties, their friends, and the public.

There were only two competitors for the repreſentation. Sir Laurence Dundas was ſupported by his long and important ſervices, and by the merchant council, who repreſent the inhabitants, to the number of fifty thouſand. Mr Millar was ſupported by the Duke of Buccleugh; by the Lord Advocate of Scotland; and by the deacons, who repreſent the incorporations of the city, which conſiſt not of five hundred perſons.

After a canvaſs, in which a peer of the realm, and an officer of the crown were employed with a very improper and unconſtitutional aſſiduity, it was judged expedient to hurry on the election of Mr Millar with a precipitation, for which no ſolid or ſatisfactory reaſon can be given. A day, accordingly, was fixed for it; and the metropolis was amuſed with the ſhow of an election. This exhibition was made without the conſent of the chief magiſtrate; had no ſanction from his precept; and was in direct oppoſition to a

great majority of the merchant council. The deacons, under the direction of their convener, assumed the rights of the ordinary council; and, previously to the election, it was universally known, that they had been under confinement and undue influence *. It is, perhaps, impossible to give the example of an election which includes illegalities so decisive and so convincing.

I. By the sett or constitution of the borough, the persons who acted had no powers of jurisdiction. Instead of making a member of parliament, they could not have atchieved the nomination of a beadle to one of the churches of the city. The sett requires that a *legal* council should consist of a majority of the magistracy, counsellors, and ordinary deacons. Now, in the present case, there was no such majority. The majority of the legal and ordinary council were actually against the measures which were adopted. The minority usurped the powers of the majority; and their proceedings were in the most violent hostility to the rules of the borough †.

II. The extraordinary deacons, as their title imports, do not constitute any part of the ordinary council. Now, it is the ordinary council who have the direction of the borough. The extraordinary deacons have a peculiar business; and this business is not left to uncertainty and opinion. The sett of the borough makes an actual specification

* See a very spirited Address to the Public by Mr Smith, deacon of the Skinners.

† The sett has these words. 'The saids provost, baillies, dean of guild, treasurer, and 'counsel, electit as said is, maksnd in the hail twenty-five persons; *They* ONLY *and* NA 'BUTHERS, *sall have the* FULL GOVERNMENT *and* ADMINISTRATION *of the* HAILL COMMON 'WEILL *of this* BURGH IN ALL THINGS.' p. 20. 21. These persons are the ordinary council. So that the *extraordinary* deacons have nothing to do in the direct government of the borough.

ſpecification of the occaſions when their votes are neceſſary *. They cannot be put in motion of themſelves. They muſt be invited to act by the ordinary council. In the preſent caſe, they preſumed to conſider themſelves as a part of the ordinary council. It is by this uſurpation that Mr Millar pretends to have a majority of the council. They interfered, where the ſett had placed a barrier to oppoſe them. But they could acquire no right by their violence. The councils held under this informality were illegal in the higheſt degree; and the proceedings they affected to operate are without any real effect, or any ſolidity of power.

III. While it is to be conſidered as an intruſion and illegality, that the *extraordinary* deacons ſhould act in the buſineſs of ordinary councils, and aſſume their rights of directing the borough, it was alſo an intruſion and illegality in them to pretend to give their votes for a repreſentative. Their peculiar buſineſs is deſcribed in the ſett; and this privilege is no part of it. They have poſſeſſed this right in no period of the hiſtory of the borough. They cannot legally vote for a repreſentative; and, when they venture to vote for one, it is under

* 'They have no powers of action, 'exceptand always thir caſes following, in the 'quhilks the hail fourteen deakens of crafts ſhall be callit and adjoined with them [the 'provoſt baillies and counſel] to give their ſpecial vote and conſultation thereinto, to wit, 'in election of the provoſt, baillies, dean of guild, and theaſurer, as ſaid is, in ſetting of 'feus, or any manner of tacks, attour the yearly romping upon Martinmas even; in giving 'of benefices and uther offices in burgh; in granting of extents, contributions, emprimits, 'and ſicklike; bigging of common warks; and in diſponing of the common good above 'the ſum of twenty pound togidder;' p. 21. 22.

The extraordinary deacons are eight in number. Without them the council conſiſts of twenty five perſons. Now of this twenty five who have the government of the borough, there were fifteen, who, in Mr Millar's election, were in the intereſt of Sir Laurence Dundas,

under a proteſtation that they are exerciſing a prerogative that does not belong to them *.

It is remarkable, that the extraordinary deacons are not repreſentative of any part of the community. They are no branch of the original conſtitution of the borough. They owe their exiſtence to the decreet-arbitral of James VI. In this decreet, they are called deacons *not of the council*. Their preſence is not neceſſary in councils. Their abſence is not puniſhable by any fine or penalty. An act of council has a full validity without them. They are merely checks upon the particular occaſions ſpecified in the ſett. The ſix council deacons, and the two trades counſellors, conſtitute the repreſentation of the incorporations. The action, accordingly, of the extraordinary deacons, in the rights of the ordinary council, and their voting for a member of parliament, are informalities ſo completely violent, that, if they are admitted, the conſtitution of the borough is actually overturned †.

IV. Mr Millar's majority, ſo exceptionable in every point of view, had not before them the precept of the chief magiſtrate; and in acting without it, they violated the ſenſe of the legiſlature, and expreſſed an open and manifeſt contempt of a known, an eſſential, and an eſtabliſhed form.

V. The Provoſt is an integral part of the council. To act independently of him is an inſult upon all law. Without his preſence, or that of a perſon who can act for him, no council can even be conſtituted. It is upon this principle that a provoſt who abſents himſelf from an election upon the legal and ſtated day, is guilty of a crime, and an object of puniſhment. The buſineſs cannot proceed

* See the records of the town.

† See the ſett.

ceed without him. An election, where he is not preſent, is altogether invalid. He is an integral part of the council, and cannot be diſpenſed with. He poſſeſſes not, indeed, a negative upon the majority. But, if he is oppoſed by a majority, it is abſolutely requiſite that this majority ſhould act in a legal council, and in his preſence *.

VI. No authorities of law, no precedents juſtify the proceedings of Mr Millar's friends. There can be nothing more certain than this. But it may be ſaid, Are they not juſtifiable from a civil or ſtate neceſſity, occaſioned by the circumſtances of his ſituation? There could not poſſibly, in the preſent caſe, exiſt a neceſſity of this ſort. The provoſt did not refuſe to do his duty. He did not indeed do what Mr Millar's friends wanted. For he had a title to follow his own judgment, and the rights of his office. He knew his duty; he did not neglect it; he gave out his precept after his own method; and a proper day was appointed for the election, when the council was full and complete. Mr Millar's friends, accordingly, inſtead of acting under a civil neceſſity, acted from a ſpirit of factious violence. In all civil neceſſities, the law points to a remedy. But there was no law to force his precept from the provoſt,

* That this is law, there is a high and irrefragable authority. The Earl of Mansfield, in the charge to the jury in the caſe the King againſt Stratton and others, has the following paſſage. 'I take the conſtitution of the government of Madras to be this; that the gover-'nour is an integral part, and therefore there can be no council held unleſs the gover-'nour is preſent. I don't ſpeak in the caſes where there is a deputy to ſupply his place. 'There is nothing ariſes from that here; but I take him to be an integral part, and that 'his preſence is neceſſary to conſtitute the council; and if he left the council, though he 'might, if it was in the middle of buſineſs, be criminal in ſo doing, yet it would operate 'as putting an end to that council, juſt as much *as if a* MAYOR, *upon a ſtated day of election was* 'to abſent himſelf: It is a crime for him to do ſo; but yet there would be an END *of the* ELECTION, 'because he is an INTEGRAL *part.' Charge, p.* 2.

voſt, and to compel him to nominate a day the moſt agreeable to Mr Millar †. Law, juſtice, and cuſtom were all upon the other ſide.

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† In the decreet-arbitral of Lord Ilay, which determines certain queſtions between the magiſtrates and the trades, there is a paſſage which has been much twiſted and miſrepreſented upon the preſent occaſion. It is as follows.

'Finds, decerns, and declares, that the right of calling the council, ordinary and extraordinary, belongs to the provoſt or preſes of the meeting; and upon an execution returned of the members being ſummoned by the ſaid provoſt or preſes his order, *thirteen* of the ordinary, and *ſeventeen* of the extraordinary council, may proceed and act, in the ſame manner as if all the members were preſent: But, if the provoſt or preſes ſhall happen to neglect, or ſhall refuſe to call a council on Wedneſday, the ordinary council day, a majority of the ſaid council [the ordinary council] may, forty-eight hours preceding the ordinary and ſtated time of meeting, require the aforeſaid provoſt or preſes, under form of inſtrument, to call a council, and upon his refuſal or neglect to comply with the demand ſo made, the majority of the ſaid council may meet on the ſaid uſual and ſtated time, and proceed to do buſineſs.' *Page* 80. 81.

No part of this paſſage can be rightly applied to Mr Millar. The firſt clauſe is not to his advantage; for his majority did not act in conſequence of any ſummons from the provoſt. The ſecond clauſe is equally inapplicable; for, in his caſe, no majority of the *ordinary* council required the provoſt to call a meeting. And that this clauſe refers to the ordinary council, and not to the extraordinary one, is obvious; for it regards a matter expreſsly about the government of the borough, which is the excluſive buſineſs of the ordinary council. At the ſame time, if the decreet of my Lord Ilay had actually given a claim to a majority of the extraordinary council to interfere in requiring the provoſt to appoint a meeting, and to act upon his refuſal, the authority of his decreet would not have operated to the favour of Mr Millar. For it would have done what is in expreſs contradiction to the ſett of the borough, which gives its full management to no other perſons but to the ordinary council; and to do this was a power which my Lord Ilay had no liberty to take. For his decreet is properly an explanation of the ſett; and the ſett is a decreet arbitral of James VI. which was ratified in parliament. It is alſo obſervable, that the Lord Provoſt has a prerogative by the act of Queen Anne to caſt a burgeſs to be elected; and that, in the preſent caſe, this prerogative was exerciſed.

It is worthy of notice, too, that the decreet of Lord Ilay gives no intimation that the extraordinary deacons have any right to vote for a repreſentative. It ſays, 'As to the 'article of commiſſioners for and from the burgh, which includes a caſe relating to the 'privilege

The 16th day of September is the date of the pretended election of Mr Millar. The election of Sir Laurence Dundas took place upon the 7th day of October. It was conducted with the utmoſt propriety, and under the ſtricteſt formalities. The town-council was aſſembled after the regular method. The friends of Mr Millar came forward anew to ſupport him, acknowledging virtually the invalidity of their former proceedings. A majority of legal electors gave their voices for Sir Laurence Dundas. Setting aſide the extraordinary deacons, who are not legal electors, the numbers were ſeventeen to ſeven. Sir Laurence Dundas muſt, accordingly, take his ſeat in parliament as the ſitting member for the metropolis of Scotland. The method of trying elections is now ſufficiently equitable and efficacious; and the titles of the claimants cannot bear the ſlighteſt compariſon. Upon the part of Mr Millar, there were noiſe, illegalities, corruption, and the mockery of eſtabliſhed uſages. Upon the part of Sir Laurence Dundas, there were order, antiquity of practice, the ſett of the borough, the rights of election, and the force of law.

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" privilege of parliament, the ſame is hereby to receive no determination, of conſent, and " at the deſire of both parties." p. 84. And it is the meaning of the ſett to exclude them altogether from this right and privilege. Nor, indeed, can it rightly be conceived how they ſhould poſſeſs this honour, ſince they repreſent no part of the community, and ſince we learn from Lord Ilay's decreet, that they were not judged to be conſiderable enough to have a vote " in the election of officers of the train-bands, the conſtables, and bailies of the public markets of the city, and their aſſiſtants, kirk and college treaſurers, ſtent-maſters, and auditors " in the towns accompts; nor in electing and chooſing the baron bailies of the ſuburbs, " namely, the bailies of Leith, Canongate, Portſburgh, and Caltoun." p. 83. Thoſe lawyers muſt have a nice and ſubtle wit indeed, who can fancy that men who cannot make a *conſtable*, ſhould be able to elect a *member of parliament!* In fact, the condition of the extraordinary deacons has always been very low. They have even no right to ſit at the council board; and it is only by *indulgence* that they appear there. For in former times they attended in waiting *behind* the ordinary council, till they ſhould be called upon by the clerks, when an act was paſſing in which they had a voice. It is on record in the council books, ſo late as the year 1765, that it was begged, by way of petition, to allow the convener, as a *ſubject*, to ſit at the council table.

This fortunate termination of the conteſts will now give peace and tranquillity to the town. The diſtractions of politics will ſoon be forgotten. The ſucceſsful party will give itſelf up to a triumph ſuitable to the greatneſs of its victory. The defeated faction will know all the bitterneſs of diſappointment. Their anguiſh muſt be keen indeed; for their expectations were moſt ſanguine. But, if their defeat is diſtreſsful, it will carry experience and inſtruction along with it. The Duke of Buccleugh will reflect with ſerioufneſs upon the time, the money, and the dignity he has loſt. Mr Peter Millar will be admoniſhed, that the union of the direction of the borough with that of the banks, that the monopoly of all the money-tranſactions of Scotland, and that the overthrow of all its private bankers, are projects which are altogether viſionary, and which muſt die away in his own head. The Lord Advocate will perceive that there are things which all his affectations of ſtateline ſs and all his boaſtings cannot accompliſh; and that the powerful and reſpectable name of the Miniſter may be employed unconſtitutionally in all its authority, without any poſitive advantage. There are electors who have too much integrity and fortitude to be overawed, intimidated, or allured.

In other reſpects, the event of the election is alſo deſirable and happy. Sir Laurence Dundas will conſider his promotion as the reward of the merit and the independency of his former conduct. He will meet the Miniſter with joy upon meaſures that are ſalutary, honourable, and expedient. He will oppoſe him with ſpirit upon meaſures of an oppoſite complexion and tendency. The electors, while they will enjoy the ſecret pleaſure which muſt reſult from the rectitude of their intentions and behaviour, will know a bewitching pride and ſatisfaction in the approbation of their fellow citizens. The town council continuing to experience the delicacy and moderation of their antient repreſentative, will exerciſe, without controul, all the rights and privileges which belong to them. Grateful to him for

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ſervices and obligations that are paſt, they will be particularly thankful in the preſent juncture, for the advancement of the gentleman, who has been called to the honour of ſuperintending their affairs. It is by the efforts of their antient repreſentative, that the borough has repeatedly eſcaped the perſevering and ſtrenuous attempts of ambitious men to enſlave it. It is now a conſequence of his fond ſolicitude and friendly concern, that its chief director and magiſtrate is a perſon whoſe ſpirit and abilities, whoſe activity and vigour can conſult and promote its proſperity and intereſts in a manner the moſt advantageous. Meaſures the moſt effectual, and of the moſt permanent operation, will be taken to perpetuate its honours and independency. The honeſt inhabitants need not dream any longer of chains, and bondage, and the houſe of Arniſton. They may even divert themſelves with the inordinate ambition of this houſe; They may contraſt the vanity and the loftineſs of its pretenſions; or, if their deliverance from danger is yet too recent for them to be diveſted of every ſentiment of terror, and to admit of the playſomeneſs of ridicule, they may, at leaſt, look to its domination, as to a proſpect that is gloomy, diſtant, and romantic.

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